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Proposed Counsel for Debtor

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

ENCORE SERVICE CORPORATION, LLC,

Debtor.

Bankruptcy No. 14-13699-abl
[Chapter 11]

Hearing Date: July 2, 2014
Hearing Time: 1:30 p.m.
Place: Foley Federal Bldg.
300 Las Vegas Blvd. So.
Las Vegas, NV 89101
Courtroom 1

**APPLICATION TO EMPLOY SHUMWAY VAN & HANSEN, CHTD., AS
COUNSEL FOR THE DEBTOR AND DEBTOR-IN-POSSESSION**

Encore Service Corporation, LLC (the “Debtor”) hereby moves the Court for an order authorizing the employment of Shumway Van & Hansen as Counsel for the Debtor and Debtor-in-Possession. This Application to employ Shumway Van & Hansen as Counsel for the Debtor and Debtor-in-Possession (the “Application”) is made pursuant to 11 U.S.C. §327(a) of the Bankruptcy Code and Rule 2014(a) of the Federal Rules of Bankruptcy Procedure.¹ The Debtor seeks to employ Shumway Van & Hansen under a general retainer for services

¹ An identical Application is being filed simultaneously in the related case of *In re Encore Acceptance, LLC*, Bankruptcy No. 14-13698-abl, together with a Motion for Order Directing Joint Administration of Related Cases Pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015.

rendered and to be rendered during the pendency of this Chapter 11 proceeding, effective as of the Petition Date. In support of this application, the Debtor states as follows:

1. On May 27, 2014, (the "Petition Date"), the Debtor commenced this case by filing a Voluntary Petition for relief under Chapter 11 of Title 11 of the United States Code (the "Code"). Pursuant to 11 U.S.C. §§ 1107 and 1108, the Debtor is operating its business as a Debtor-in-Possession.

2. No Unsecured Creditors' Committee has yet been appointed in this case by the United States Trustee.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

5. This Application is being made pursuant to 11 U.S.C. §§ 327(a), 328 and 329 and Bankruptcy Rules 2014 and 2015.

RELIEF REQUESTED

6. The Debtor, as Debtor-in-Possession, wishes to employ Michael C. Van, Esq., Robert A. Ryan, Esq. and Shumway Van & Hansen as general bankruptcy counsel *nunc pro tunc* effective as of the Petition Date.

7. Shumway Van & Hansen is a firm comprised of attorneys duly admitted to practice in this Court.

8. Prior to the Petition Date, the Debtor sought the services of Shumway Van & Hansen with respect to its financial condition, restructuring matters, and the possible commencement of a Chapter 11 case.

9. The Debtor seeks continued representation of Shumway Van & Hansen because of their familiarity with the Debtor's situation and its financial and legal affairs.

SERVICES TO BE RENDERED

10. Applicant has agreed to pay proposed counsel its normal hourly billing rate subject to the applicable provisions of the Bankruptcy Code.

11. Applicant selected Shumway Van & Hansen for their experience in matters of this character as they are well qualified to represent Applicant as Debtor-in-Possession in this Chapter 11 case.

12. Shumway Van & Hansen will perform professional services on behalf of the Debtor, as follows:

- a. Legally advise the Debtor with respect to its powers and duties as Debtor-in-Possession in connection with the management, maintenance, and control of its business;
- b. Advise and represent the Debtor in connection with financial and business matters, including the sale of assets, if any;
- c. Assist the Debtor in properly performing its duties pursuant to 11 U.S.C. § 1107, any other applicable section of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the United States Trustee Guidelines;
- d. Prepare all necessary motions, applications, answers, responses, objections, orders, reports, and/or any other documents or pleadings on behalf of the Debtor;
- e. Advise and represent the Debtor in connection with the investigation of potential causes of action against persons or entities, including, but not limited to, avoidance actions, preferential transfers, and collection of all accounts receivable and the litigation thereof, if warranted;

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- f. Advise and represent the Debtor concerning the rights and remedies of the estate in regards to the assets of the estate, and with respect to the administrative, secured, priority, and general unsecured claims of creditors, which includes the analysis and objections, if any, to all Proofs of Claim;
- g. Interact and negotiate with creditors;
- h. Advise and represent the Debtor in the negotiation, formulation, and drafting of a Chapter 11 Plan of Reorganization, Disclosure Statement, and all other documents associated with confirmation;
- i. Represent the Debtor in all proceedings or hearings before this Court or before other courts with jurisdiction over this case, as well as any pre-petition litigation;
- j. Conduct Rule 2004 examinations of witnesses, claimants, or adverse parties, when necessary; and
- k. Provide such other counsel and advice as the Debtor may require in connection with this Chapter 11 case.

13. It is necessary and essential that the Debtor, as Debtor-in-Possession, employ counsel to render the foregoing professional services.

14. Shumway Van & Hansen has indicated a willingness to act on behalf of, and render these services to the Debtor.

15. Subject to Court approval, in accordance with 11 U.S.C. § 330, the Debtor seeks to retain Shumway Van & Hansen on an hourly basis at the customary and standard rates that Shumway Van & Hansen charges for similar representation, plus reimbursement of actual and necessary expenses incurred.

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1 16. Prior to the filing of this Chapter 11 proceeding, Shumway Van & Hansen
2 received the sum of \$20,000.00 representing the retainer for this engagement.

3 17. Shumway Van & Hansen reserves the right to seek compensation in
4 accordance with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, United
5 States Trustee Guidelines, and Orders of this Court.

6 18. There are no arrangements between Shumway Van & Hansen and any other
7 entity for the sharing of compensation received, or to be received, in connection with this case,
8 except insofar as such compensation may be shared among attorneys.

9 19. The Debtor proposes to pay Shumway Van & Hansen its customary hourly
10 rates in effect from time to time and to reimburse Shumway Van & Hansen for its expenses
11 according to its customary reimbursement policies.

12 20. The attorneys and paralegals currently expected to be primarily responsible
13 for this matter, and their respective current hourly rates, are set forth in the accompanying
14 Declaration of Michael C. Van, Esq., filed concurrently herewith.

15 21. These rates are subject to generally applicable increases as put into effect from
16 time to time by Shumway Van & Hansen.

17 22. Shumway Van & Hansen categorizes its billing into subject matter categories
18 in compliance with Guidelines for Reviewing Applications for Compensation and
19 Reimbursement of Expenses filed under 11 U.S.C. § 330 adopted by the Executive Office for
20 the United States Trustee pursuant to 28 U.S.C. § 586(a)(3)(A) (the "Fee Guidelines").

21 23. Additionally, Shumway Van & Hansen understands that its compensation in
22 this case is subject to approval of this Court, after notice and a hearing, in accordance with 11
23 U.S.C. §§ 328(a) and 330(a), Bankruptcy Rule 2016, and the Fee Guidelines, as an expense of
24 administration pursuant to 11 U.S.C. §§ 507(b) and 503(b). Shumway Van & Hansen may seek
25 interim compensation during the case as permitted by 11 U.S.C. § 331.
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DISINTERESTEDNESS

24. Shumway Van & Hansen represents no interest which is adverse to the Debtor as Debtor-in-Possession, or the estate in the matter upon which it is to be engaged.

25. Shumway Van & Hansen's employment would be in the best interest of this Debtor and this Debtor's estate.

26. As disclosed in the Declaration of Michael C. Van, Esq., and to the best of Debtor's knowledge, information, and belief, Shumway Van & Hansen is "disinterested" within the meaning of 11 U.S.C. §§ 101(4) and 327 in that Shumway Van & Hansen, its shareholders, counsel, and associates:

- a. Are not creditors or insiders of the Debtor pursuant to 11 U.S.C. § 101(31), nor do they have any connection with the Debtor, creditors, any other party-in-interest, their respective attorneys and accountants, the United States Trustee, any person employed in the Office of the United States Trustee, or any insider of the Debtor. *See* Declaration of Michael C. Van, Esq.;
- b. Do not employ any person who is related to a Judge of this Court or the Office of the United States Trustee. *Id.*; and
- c. Do not have an interest materially adverse to the interest of the estate or of any class of creditors or equity holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtor or for any other reason. *Id.*

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1 **WHEREFORE**, this Debtor requests that this Court enter an Order, in
2 substantially the same form attached as Exhibit 1, authorizing the employment of Michael C.
3 Van, Esq., Robert A. Ryan, Esq., and Shumway Van & Hansen as its general bankruptcy
4 counsel in this Chapter 11 case effective as of the Petition Date, and for such other relief as the
5 Court deems just and appropriate.

6 DATED this 27th day of May, 2014.

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8 **ENCORE SERVICE CORPORATION, LLC**
9 Applicant/Debtor

10 By: /s/ Richard Lee Broome
11 Richard Lee Broome
12 Its: Manager

13 Submitted this 27th day of May, 2014.

14 **SHUMWAY, VAN & HANSEN, CHTD.**

15
16 /s/ Michael C. Van
17 Michael C. Van, Esq. #3876
18 Robert A. Ryan, Esq. #12084
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EXHIBIT 1

EXHIBIT 1**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

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Debtor.

Bankruptcy No. 14-13699-abl
[Chapter 11]Hearing Date: July 2, 2014
Hearing Time: 1:30 p.m.
Place: Foley Federal Bldg.
300 Las Vegas Blvd. So.
Las Vegas, NV 89101
Courtroom 1**[PROPOSED] ORDER APPROVING APPLICATION TO EMPLOY SHUMWAY VAN
& HANSEN, CHTD., AS COUNSEL FOR THE DEBTOR AND DEBTOR-IN-
POSSESSION**

This Court having considered the *Application to Employ Shumway Van & Hansen Chtd. as Counsel for the Debtor and Debtor-in-Possession* (“Application”), filed on May 27, 2014 [ECF No. 5] and the *Declaration of Michael C. Van in Support of the Application to Employ Shumway Van & Hansen Chtd. as Counsel for the Debtor and Debtor-in-Possession* (“Declaration”) filed on May 23, 2014 [ECF Docket No. 6], which seeks, pursuant to 11 U.S.C. §§ 327(a) and 328(a), an Order approving the employment of Shumway Van & Hansen Chtd to represent the Chapter 11 Debtor, Encore Service Corporation, LLC, as counsel in connection with this bankruptcy case; and having determined that the appropriate copies of the

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1 Application and Declaration were transmitted to the United States Trustee in accordance with
2 FRBP Rule 2014(a); and good cause otherwise appearing therefore, it is hereby

3 **ORDERED** that the Application is hereby GRANTED; it is further

4 **ORDERED** that the Debtor is hereby authorized to employ Shumway Van & Hansen
5 Chtd. under a general retainer in accordance with the terms set forth in the Application to
6 represent and assist the Debtor in connection with any and all matters arising in or related to
7 this bankruptcy case; it is further

8 **ORDERED** that the employment of Shumway Van & Hansen Chtd. shall be effective
9 as of the Petition Date (May 27, 2014); and it is further

10 **ORDERED** that any compensation requested by Shumway Van & Hansen Chtd. shall
11 be fixed upon further application to the Court in accordance with 11 U.S.C. §§ 328 and 330.
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LR 9021 CERTIFICATION

In accordance with LR 9021, counsel submitting this document certifies as follows (check one):

_____ The Court has waived the requirement set forth in LR 9021(b)(1).

_____ No party appeared at the hearing or filed an objection to the motion.

_____ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

_____ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

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